State of Rhode Island
RHODE ISLAND BOARD OF EDUCATION
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Enclosure 6b
March 9, 2021

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TO: Members of the Council on Elementary and Secondary Education

FROM: Amy Beretta, Appeals Committee Chair

RE: Approval of Appeals Committee Recommendation – Tracy Andrews-Mellouise v. East Providence School Committee

The Appeals Committee of the Council on Elementary and Secondary Education met on February 25, 2021, to hear oral argument on the appeal of the following matter:

Tracy Andrews-Mellouise v. East Providence School Committee

RECOMMENDATION: THAT, in the matter of Tracy Andrews-Mellouise v. East Providence School Committee, the Commissioner's decision is affirmed, as presented.

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STATE OF RHODE ISLAND **COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION**

TRACY ANDREWS-MELLOUISE	:
	:
	:
vs.	:
	:
EAST PROVIDENCE SCHOOL COMMITTEE	:
	:

DECISION

This is an appeal by Tracy Andrews-Mellouise ("Appellant") from the decision of the Commissioner of Education ("Commissioner"), dated April 16, 2020 (the "Decision"), whereby the Commissioner determined that Appellant did not meet the burden of proof to overturn the decision of the East Providence School Committee (the "EPSC") to non-renew her contract as Assistant Director of Pupil Personnel Services.

The facts were found in the Decision as follows. Appellant was employed by the EPSC as Assistant Director of Pupil Personnel Services since December of 2013. *Decision at 2*. Her last three (3) year employment contract expired on October 31, 2018. *Id.* At that time, her most recent performance review was "excellent" and there was no evidence of complaints lodged against her by parents or colleagues. *Id. At 3.* Appellant met with Superintendent Kathryn Crowley (the "Superintendent") on September 10, 2018, and the Superintendent indicated she would bring a proposed new three (3) year employment contract to the School Committee. *Id.* Prior to the meeting, a School Committee member informed the Superintendent that the vote on Appellant's would be a "problem". *Id.* The School Committee voted unanimously to take no action on Appellant's contract at a meeting on September 25, 2018. *Id.* After speaking with four

(4) members of the EPSC staff and one (1) parent, the Superintendent changed her mind with respect to the recommendation to renew Appellant's contract and decided she could do better. *Id.* In a letter dated January 22, 2019, the Superintendent notified Appellant that she would recommend the School Committee not renew her employment contract because other more qualified individuals could better meet the District's needs. *Id. At 4*. In a letter dated February 11, 2019, the Superintendent notified Appellant that the non-renewal recommendation would be taken up at its meeting on February 12, 2019, and added that the Department is being organized and replacing Appellant's position with a .5 FTE (part-time) position. *Id.* On February 26, 2019, the School Committee voted not to renew Appellant's contract citing the two reasons provided in the Superintendent's letters, that the Superintendent believes she can find an individual more qualified that better meets the District's needs, and the reorganization. *Id. at 4-5.* At a hearing under R.I. Gen. Laws §16-12.1-3 and 4 on May 21, 2019, the School Committee voted unanimously to uphold its non-renewal decision. *Id. at 5.* Appellant then appealed that decision to the Commissioner of Education for a de novo review.

After an evidentiary hearing and briefing by the parties, the Commissioner issued the Decision on April 16, 2020, upholding the decision of the School Committee not to renew Appellant's contract. In the Decision, the Commissioner noted that it is ". . . well settled law that a Superintendent's belief that a more qualified educator can be found is a permissible reason for non-renewal." *Decision at page 10 (citing Karagozian v. North Providence School Committee*, decision of the Commissioner dated May 17, 1979*; Tracy v. Scituate School Committee*, decision of the Commissioner dated March 12, 1984). Summarizing the standard of review and the burden of proof in cases under the School Administrators' Right Act (the "ARA"), R.I. Gen. Laws §16-12.1-1 et seq., the Commissioner stated that ". . . although decisions of this type should be

reasonable, supported factually or grounded in some justification that would insulate the action from being arbitrary and capricious, the decision is presumed valid unless rebutted by specific evidence required of the nonrenewed educator." *Decision at 11* (*citing Kagan v. R.I. Board of Regents*, 1997 WL 1526517 (R.I. Super); *Chrabaszcz v. Johnston School Committee*, decision of the Commissioner dated January 28, 2005). The Commissioner rejected the argument of Ms. Andrews-Mellouise that specific provisions of the Basic Education Program Regulations of the Council on Elementary and Secondary Education (the "BEP") mandate that the Superintendent follow the most recent formal evaluation in making decisions on renewals of employment contracts for district employees. *Decision at 12.* In conclusion, the Commissioner determined that "the good faith of her [Superintendent] belief" that she could find a more qualified individual to meet the district's needs provided a valid basis for non-renewal of Ms. Andrews-Mellouise's contract. *Id.* Additionally, the Commissioner noted that the unrebutted evidence of the reorganization supports the non-renewal. *Id.* The appeal was denied and dismissed.

Ms. Andrews-Mellouise filed a timely appeal with the Council on Elementary and Secondary Education (the "Council"). Ms. Andrews-Mellouise asks the Council to reverse the Decision on the basis that the Commissioner erred by (1) ignoring evidence that the Superintendent did not have a good faith belief that she could find a better candidate; and (2) that there is no valid secondary reason for the non-renewal.

The Council reviewed the briefs and considered the arguments presented by the parties at oral argument. On appeal, the Council's review is limited to a determination regarding whether the decision of the Commissioner is "patently arbitrary, discriminatory, or unfair." Altman v. School Committee of the Town of Scituate, 115 (R.I.) 399, 405 (1975).

In asking the Council to overturn the Decision on the basis that the Commissioner ignored evidence that the Superintendent lacked good faith in her determination, Appellant argues that she "violated her obligations under the BEP." *Brief of Appellant at page 9.* The Council is asked to find that the BEP requirements related to personnel reviews in each school district changed the standard of review under the ARA. In the current case, Appellant argues that the Superintendent should have been bound by the most recent review performed in accordance with the EPSC's process. We disagree. The BEP requires a review system of "human capital management system" be in place in each local education agency, but does not attempt to control any specific outcomes of that process. 200 R.I.C.R.-20-10-1.4.2(B)(1). Notably, the BEP states that " . . . each LEA shall maintain control of its ability to recruit, hire, manage, evaluate, and assign its personnel." 200 R.I.C.R.-20-10-1.4.2(B)(3). The language demonstrates that the BEP is not intended to restrict a local education agency in its decisions when managing its staff. On the contrary, the language of the regulation plainly prohibits relinquishing control of such decisions. Changing the standard of review under the ARA to prohibit a Superintendent from acting upon issues discovered outside of the formal review process is not consistent with either administrative precedent cited by the Commissioner, or the language of the BEP. In an appeal before the Council subsequent to the issuance of the BEP, we noted that the "standard for non-renewal is difficult to attain." *Gibbs v. East Providence School Committee, decision of the Council on Elementary and Secondary Education dated March 27, 2017, at page 4*.

The Council does not act as a fact finder when hearing appeals from decisions of the Commissioner. The Commissioner found as a matter of fact that the Superintendent "decided she could do better", *Decision at page 3*, and determined that the belief was in good faith. *Decision at page 12.* That finding is supported by evidence in the record, and is enough to satisfy the

standard of review for non-renewals under the ARA. The Decision is not arbitrary, discriminatory, or unfair and thus does not overcome the Council's standard of review. Altman at 405. Therefore, the Decision cannot be disturbed by the Council.

We need go no further. The Commissioner's decision upholding the non-renewal decision by the EPSC on the first grounds is sufficient for the Council to affirm the Decision. Nonetheless, we note that Appellant's second argument for error is not entirely consistent with the Decision. Appellant asks us to find that there is no valid secondary reason for the non-renewal. However, the Decision merely states that the EPSC reorganization ". . . also supports the Appellant's non-renewal." *Decision at page 12*. In total, the Commissioner's decision that the EPSC properly non-renewed the Appellant's contract, and that such decision was supported by the reorganization, is not "patently arbitrary, discriminatory, or unfair". Id.

For the reasons stated herein, the decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on February 25, 2021.

Council on Elementary and Secondary Education

Barbara A. Cottam, Chair of the Board of Education

March 9, 2021

Amy Beretta, Appeals Committee Chair

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